





# City of Loma Linda Official Report

Floyd Petersen, Mayor  
Stan Brauer, Mayor pro tempore  
Robert Christman, Councilmember  
Robert Ziprick, Councilmember  
Charles Umeda, Councilmember

COUNCIL AGENDA: June 13, 2006

TO: City Council

VIA: Dennis R. Halloway, City Manager 

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer 

SUBJECT: Approve Council Bill R-2006-33 Authorizing an Agreement with Union Pacific Railroad (UPRR) to Install and Maintain an Underground Fiber Optic Wireline Crossing at Beaumont Avenue.

## RECOMMENDATION

It is recommended that the City Council approve Council Bill R-2006-33 and authorize the City Manager and/or Public Works Director to execute an agreement with UPRR to install and maintain an underground fiber optic wireline crossing at Railroad Milepost 545.4 on the Yuma Subdivision.

## BACKGROUND

Staff has been working with UPRR for approval to install and maintain a fiber optic line under their right-of-way crossing at Beaumont Avenue. The UPRR has requested a new agreement with the City as a condition of their approval. They have provided an agreement between UPRR and the City for this purpose. The City Attorney has reviewed and approved the agreement.

## ANALYSIS

None.

## FINANCIAL IMPACT

UPRR is requesting \$4,500.00 for processing and executing the agreement. Funding for this project has been budgeted in Account No. 40-5900-1830.

*I:\Public Works Admin\Staff Reports\Agreement UPRR Beaumont.doc*

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LOMA LINDA, CALIFORNIA, AUTHORIZING THE MAYOR  
OR MAYOR PRO TEMPORE TO EXECUTE FOR AND ON  
BEHALF OF THE CITY AN AGREEMENT BETWEEN THE  
UNION PACIFIC RAILROAD AND THE CITY OF LOMA  
LINDA

WHEREAS, the City of Loma Linda desires to install underground fiber optics conduit on Beaumont Avenue at the Union Pacific railroad crossing; and

WHEREAS, the Undercrossing within the Railroad's facilities on Beaumont Avenue is necessary for the installation of fiber optic cable to provide city services to residents;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Loma Linda that the Agreement dated as of June 13, 2006 between the Union Pacific Railroad and the City, a copy of which is attached hereto as Exhibit "A", is hereby approved, and the Mayor or Mayor pro tempore is hereby authorized and directed to execute and deliver said Agreement for and in the name and on behalf of the City.

The Mayor or in the absence of the Mayor the Mayor pro tempore, with the advice and consent of the City Attorney, is authorized to approve any additions to or changes in the form of said Agreement deemed necessary or advisable, approval of such additions or changes to be conclusively evidenced by execution by the Mayor or Mayor pro tempore.

The Mayor or Mayor pro tempore, with the advice and consent of the City Attorney, is further authorized to execute such other documents or take such other actions as may be deemed necessary or appropriate to carry out the purpose and intent of the Agreement in cooperation with the implementation of the Project.

PASSED, APPROVED AND ADOPTED this 13th day of June 2006 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

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Floyd Petersen, Mayor

ATTEST:

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Pamela Byrnes-O'Camb, City Clerk

## **WIRELINE CROSSING AGREEMENT**

Mile Post: 545.4, Yuma Subdivision  
Location: Loma Linda, San Bernardino County, California

**THIS AGREEMENT** is made and entered into as of April 11, 2006, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **CITY OF LOMA LINDA**, a California municipal corporation to be addressed at 25541 Barton Road, Loma Linda, California 92354 (hereinafter the "Licensee").

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**Article I.      LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand Five Hundred Dollars (\$4,500.00)**.

**Article II.      LICENSOR GRANTS RIGHT.**

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one underground fiber optic wireline crossing only

(hereinafter the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 27, 2006, marked Exhibit "A". Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than the above-mentioned, and said Wireline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

**Article III.      CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, attached hereto and hereby made a part hereof.

**Article IV.     IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is to do any of the work performed on the Wireline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understands its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

**Article V.     INSURANCE.**

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, **identifying Folder No. 2377-51**, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Wireline' located on Railroad right-of-way at Mile Post 545.4, on the Yuma Subdivision, at or near Loma Linda, San Bernardino County, California.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

C. All insurance correspondence shall be directed to:

Joan M. Preble  
Folder No. 2377-51  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street STOP 1690  
Omaha, NE 68179-1690

**Article VI.     TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

**CITY OF LOMA LINDA**

By: \_\_\_\_\_

Joan Preble  
Manager Contracts

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF LOMA LINDA

By: \_\_\_\_\_

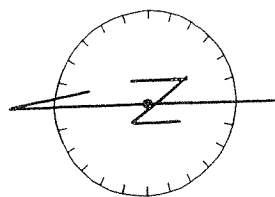
Joan Preble  
Manager Contracts

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

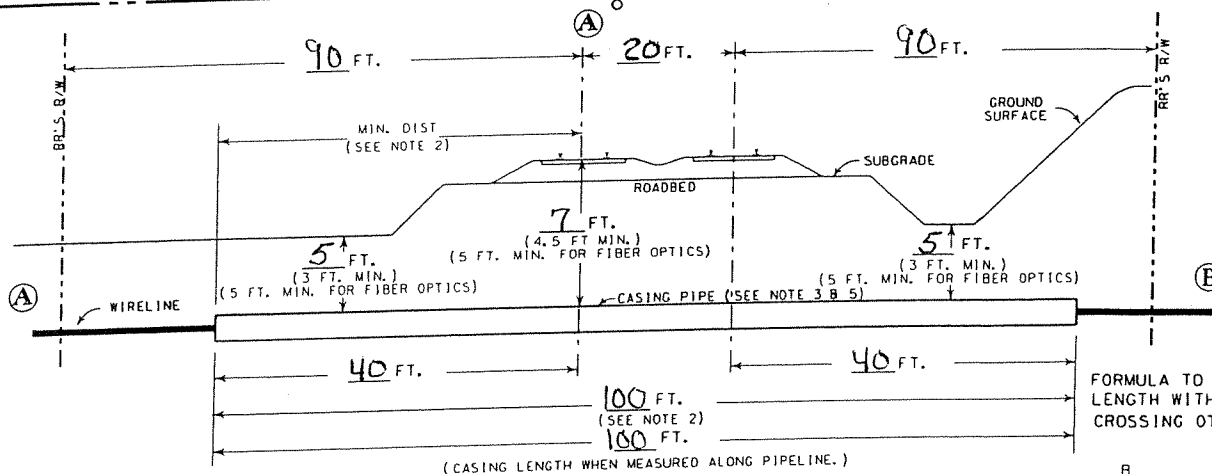
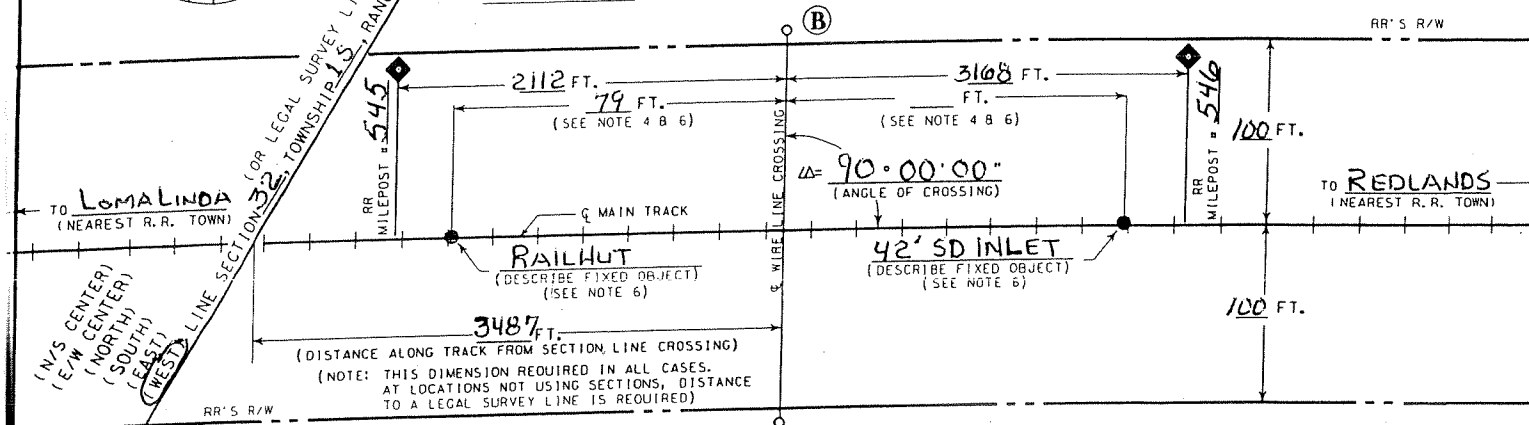
PLACE ARROW INDICATING NORTH  
DIRECTION RELATIVE TO CROSSING



# UNDERGROUND WIRELINE CROSSING 750 VOLTS OR LESS

NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE  
FILLED IN TO PROCESS THIS APPLICATION.



FORMULA TO FIGURE CASING  
LENGTH WITH ANGLE OF  
CROSSING OTHER THAN 90°

$$\frac{B}{\sin \Delta} = \frac{B}{\sin \Delta}$$

MIN. DIST. (NOTE 2)

1/2 CASING LENGTH

TRACK

## NOTES :

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM  $\mathcal{C}$  OF TRACK, EXCEPT AS NOTED.
- 2) CASING MUST EXTEND A MINIMUM OF 30' OUT FROM  $\mathcal{C}$  OF TRACK, MEASURED AT RIGHT ANGLES.
- 3) CASING MATERIAL : STEEL, RIGID METALLIC CONDUIT (NO PVC).
- 4) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE,  $\mathcal{C}$  OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 5) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 6) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES;  $\mathcal{C}$  OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR  $\mathcal{C}$  OF CULVERTS.
- 7) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS WIRELINE CROSSING WITHIN DEDICATED STREET? YES YES; X NO;
- B) IF YES, NAME OF STREET BEAUMONT AVE
- C) TYPE WIRELINE CROSSING: TELEPHONE; TELEVISION; X FIBER OPTIC;
- OTHER;
- D) VOLTAGE TO BE CARRIED UNDER TRACK N/A NO. OF WIRES 28
- E) CASING TYPE TO BE INSTALLED BLACK IRON
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):  
X DRY BORE AND JACK (WET BORE NOT PERMITTED);  
TUNNEL; OTHER
- G) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 50' (30' MIN.)
- H) DISTANCE TO NEAREST ROAD CROSSING WITH SIGNAL LIGHTS OR GATES (IF LESS THAN ONE MILE) 0.89 MILE
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATIONS DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE X DOES; DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 2005-0818030

## EXHIBIT "A"

(FOR RAILROAD USE ONLY - DO NOT WRITE IN THIS BOX)

UNION PACIFIC RAILROAD CO.

Yuma

(SUBDIVISION)

M. P. 545.4 E. S. 4442+80

UNDERGROUND WIRELINE CROSSING

Loma Linda Ban Bernardino CA

(NEAREST RR STATION)

(COUNTY)

(STATE)

FOR City of Loma Linda

(APPLICANT)

RR FILE NO. 2377-SJ DATE 3-27-06

## WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS  
DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND  
LOCATION OF FIBER OPTIC CABLE.  
PHONE : 1-800-336-9193

## **EXHIBIT B**

### **Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

(a) If the Wireline or any part thereof is to be located above the top of the rails of any track or communication and signal lines, including static wires, overhead clearance provided by the Wireline shall be no less than that shown on Exhibit A. The Wireline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with the Specifications prescribed in the current issue of the National Electrical Safety Code of the American National Standards Institute. In the event such Specifications conflict in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specifications shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline shall be done to the satisfaction of the Licensor.

(c) If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

(d) The Wireline shall be constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.



(e) In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on Exhibit A. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage," or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

**Section 3. NOTICE OF COMMENCEMENT OF WORK.**

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline. All such work shall be prosecuted diligently to completion.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Wireline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision or inspection, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.**

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce or encase the Wireline (if it is an underground facility) to the satisfaction of the Licensor, or move all or any portion of the Wireline to such new location, as the Licensor may designate, whenever in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

**Section 6.      INTERFERENCE.**

In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately take such action as may be necessary to eliminate such interference.

**Section 7.      PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

**Section 8.      CLAIMS AND LIENS FOR LABOR AND MATERIAL.**

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wireline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wireline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

**Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, penalties, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

**Section 10. INDEMNITY.**

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Wireline or any part thereof; or

2. The presence, operation, or use of the Wireline or electric current conducted thereon or escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

**Section 11. REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline from the property of the Licensor and restore such property to as good a condition as it was in before the Wireline was originally constructed, all to the satisfaction of the Licensor. If the Licensee fails to do the foregoing, the Licensor may perform the work of removal and restoration at the expense of the Licensee. The Licensor shall not be liable to the Licensee for any damage sustained by the Licensee as a result of the removal of the Wireline by the Licensor as in this section provided, nor shall such action prejudice or impair any right of action for damages or otherwise that the Licensor may, at the time of such removal, have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

**Section 13. TERMINATION.**

(a) If the Licensee does not use the right herein granted or the Wireline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liability, accrued or otherwise, which may have arisen prior thereto.

**Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

## **EXHIBIT B-1**

### **Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability** insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least  
    \$500,000 each accident, \$500,000 disease policy limit  
    \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

**D. Umbrella or Excess Policies** In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

**Other Requirements**

- E.** Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**
- F.** Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. All waivers of subrogation **shall be indicated on the certificate of insurance.**
- G.** All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. **Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.**
- H.** Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. **Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.**
- I.** Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

- J.** Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K.** The fact that insurance is obtained by Licensee or Licenser on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licenser shall not be limited by the amount of the required insurance coverage.